IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8545 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 : YES/// 3 to 5 : NO

WILSON D CHRISTIAN & Ors

Versus

ONGC LTD

Appearance:

MR GM JOSHI for Petitioners

MR RAJNI H MEHTA for Respondent No. 1, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. Mr. Joshi is permitted to place on the record, the Office Order dated 14th March, 1997 and the copy of

the Government Notification dated 8th April, 1980.

3. The petitioners before this Court are Class-III employees of the Oil & Natural Gas Corporation Limited, the respondent herein [hereinafter referred to as, `the Corporation']. The petitioners challenge the order dated 14th March, 1997 made by the competent authority. By the said order, the Recruitment and Promotion Regulation, 1980 have been modified with effect from 1st January, 1997. It appears that prior to the said modification, all the Class-III employees were eligible for further promotion to the Executive Cadre, however, by the said modification, a new avenue of promotion has been created in Class-III service in supervisory cadre. Further, for promotion to the post of Executive cadre, a Trade Test has been prescribed for the persons who do not possess the requisite qualification. It appears that various qualifications possessed by the employees of the Corporation have been classified as Q-1, Q-2 and Q-3. Different length of experience is prescribed for persons possessing the qualification in the above referred three categories for being eligible for further promotion to the Executive cadre at E-0 level. However, the persons possessing the qualification less than Q-3 category have to take a Trade Test for being eligible for promotion to the Executive Cadre at E-0 level. The petitioners are the persons who possess the qualification lesser than Q-3 category ie., they possess a Trade Certificate or have passed Matriculation or equivalent qualification. It is contended that prior to the impugned modification, even the persons possessing lesser qualification, like the petitioners, were eligible for being considered for further promotion in Executive cadre at E-0 level. Thus, the right hitherto enjoyed by the petitioners has been severely prejudiced by the impugned modification. It is contended that the condition of service of the petitioners has thus been changed without following the due procedure. In the alternative, it is contended that the said modified rules shall apply to the persons entering the service on or after the effective date of modification and cannot be made applicable retrospectively so as to affect the right of the existing employees. In support of this contention, Mr. Joshi has relied upon the judgments of the Hon'ble Supreme Court in the matters of T.R Kothandaraman & Ors. v. Tamil Nadu Water Supply & Drainage Board & Ors. [(1994) 6 SCC 282], of Mohammad Shujat Ali & Ors. v. Union of India & Ors. [(1975) 3 SCC 76], of T.R Kapur & Ors. v. State of Haryana & Ors. [1986 (Supp) SCC 584].

4. In response to the notice issued by this Court,

the Corporation has appeared through the learned advocate Mr. Mehta. The petition is contested and in resply to the petition, an affidavit has been made by one Shri T.B Kher, Superintending Engineer [E&T]-P&A. It is contended that keeping in view the fast developing technology, the Corporation needs more qualified and efficient employees at higher level. With a view to improving the efficiency of the Corporation, it is decided to select better qualified persons in higher posts and with a view to achieving this end, the impugned modification has been made. It is further contended that the impugned modification has been made in consultation with different Unions operating in the Corporation and after entering an agreement/memorandum of understanding with the recognized Unions representing majority of the employees. Besides, no employee has a vested right to promotion and the Corporation has powers to amend the rules which shall be binding to all concerned. It is further submitted that the modification cannot be said to have been made retrospectively. The said modification is prospective in its application from the date it is made effective ie., it shall apply to all the employees of the Corporation who are on the roll of the Corporation on the effective date of the modification. In support of this contention, Mr. Mehta has relied upon the judgment of the Hon'ble Supreme Court in the matter of State of Jammu & Kashmir v. Shiv Ram Sharma & Ors. [AIR 1999 SC 2012].

6. In the matter of T.R Kothandaraman & Ors. [Supra], Mr. Joshi has particularly relied upon the observations made in paragraph 15 and 23 of the judgment. In paragraph 15 of the judgment, the Hon'ble Supreme Court has observed that, `the social justice is a requirement of Directive Principles of our Constitution'. In paragraph 23 of the judgment, the Court has observed that, `...too much emphasis on higher education may cause dent to cause of social justice, as it would be the poorer section of the society which would be deprived of its legitimate expectations. The preference given to the degree-holders would, at the same time given fillip to the desire to receive higher education, as such persons would always be favourably placed as compared to the lesser educated onces. A harmony would thus be struck by maintaining reasonableness in the ratio, between the call of social justice and the need for higher education, without in any way jeopardising the principal object of classification.'

7. In the matter of Ramchandra S.D & Ors. [Supra], the Court was considering promotion to the post of Deputy Collector, a State Cadre from amongst the Mamlatdars, a

Divisional Cadre. The question before the Court was inter-say seniority of the Mamlatdars serving in different Divisions for further promotion to the post of Deputy Collector. In the matter of Mohammad Shujat Ali & Ors., the Court was considering the right of non-graduate Supervisors for promotion to the post of Asstt. Engineer. The Court held that, `a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service but mere chance of promotion is not a condition of service, and therefore, a rule which affects chances of promotion cannot be regarded as varying conditions of service.' Same is the view expressed by the Hon'ble Supreme Court in the matter of T.R Kapur [Supra]. However, the Court has further held that, `the rule which affects the condition of service cannot be made retrospective so as to take away the benefits acquired under the existing rules. In re. Ram Sharma & Ors. [Supra], the Court was considering the validity of rules made in the year 1990 prescribing possession of qualification of matriculation as a pre-requisite for further promotion, affecting the right of promotion of some employees. In paragraph 6 of the judgment, the Court held that, `it is permissible for the Government to prescribe proper qualification in the matter of appointment or promotion to different posts .... in Roshanlal Tandon .... it was held by this Court that once appointed an employee has no vested right in regard to the terms of service but acquires status, and therefore, the rights and obligations thereto are no longer determined by consent of parties but by statute or statutory rules which should be framed and altered unilaterally by the Government.... there was an avenue provided for promotion but the prescription of the qualification was not favourable to the respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular employee but with reference to condition of service, making avenue of promotion to higher grades. The observations made in T.R Kothanan.... [Supra] stands fulfilled.'

8. In the present case, under the prevalent rules [before modification] the petitioners and such others had a right to be considered for further promotion in Executive Cadre without securing any additional qualification. While under the modified rules, the said right is fettered in as much as the employee concerned is required to take a Trade Test. The question is, therefore, whether introduction of the Trade test can be said to have brought about change in condition of service. Mr. Joshi has contended that the right

hitherto enjoyed by the petitioner has been thwarted by introduction of the Trade test. The petitioners had entered the service with a legitimate expectation of being considered for promotion to the Executive cadres at E-0 level and above. This legitimate expectation could not have been adversely affected by a latter modification giving it retrospective effect.

9. I am unable to agree with this contention. As held by the Hon'ble Supreme Court, in the above referred judgments, the mere chance of promotion is not a condition of service. In the present case also, the petitioners' right to be considered for promotion has not been taken away. All that is done is that an additional qualification has been prescribed as a pre-requisite for being considered for such promotion. As held by the Hon'ble Supreme Court in the matter of Re. Ram Sharma & Ors [Supra] prescribing the additional qualification does not amount to change in condition of service. Besides, under the impugned modification, an avenue of promotion in supervisory cadre has also been opened which shall satisfy the need for career promotion of the petitioners and such others. The employees of the Corporation being governed by the statutory rules, the terms of contract entered into at the time of entering the service looses significance, the petitioners would be governed by the statutory rules which can be modified by the Corporation, even to the detriment of some of the employees. I am of the view that the impugned modification has taken care of the career promotion of the employees who are unable to acquire qualification for being eligible to the Executive cadre and the ends of social justice must, therefore, be held to be satisfactorily met.

10. The alternative contention raised by Mr. Joshi also cannot be accepted. Once the rules are modified, the modified rules shall apply to all the employees existing on the effective date. A common class of employees cannot be divided into sub-classes, to be governed by two different set of rules. In my view, the rules cannot be said to have been made retrospective by making them applicable to all the existing employees. It is a settled law that such rules can be said to be retroactive inasmuch as it shall apply to all the employees existing on the date and to those who enter the service thereafter. The retroactive application of the rules have been upheld by the Hon'ble Supreme Court and the High Courts time and again. The claim of the petitioners for being governed by the un-modified rules, therefore, requires to be rejected.

11. No other contention is raised before me. In view of the above discussion, the petition is dismissed. Notice is discharged.

****

Prakash*